

Minutes of a Regular Meeting

Approved 1/8/04

Town of Los Altos Hills PLANNING COMMISSION

Thursday, November 13, 2003, 7:00 p.m.
Council Chambers, 26379 Fremont Road

cc: Cassettes (1) #12-03

1. ROLL CALL AND PLEDGE OF ALLEGIANCE

The Planning Commission regular meeting was called to order at 7:00 p.m. in the Council Chambers at Town Hall.

Present: Chairman Clow, Commissioners Mordo, Vitu, Cottrell & Kerns

Absent: Commissioner Vitu

Staff: Carl Cahill, Planning Director; Mintze Cheng, City Engineer; Debbie Pedro, Associate Planner; Angelica Herrera Olivera, Assistant Planner; Lani Smith, Planning Secretary

2. PRESENTATIONS FROM THE FLOOR-none

3. PUBLIC HEARINGS

- 3.1 LANDS OF RULE, 24183 Hillview Road (160-03-ZP-VAR.); A request for a variance for an existing entry gate that exceeds the 5'6" fence height allowed for fencing that is at least 50 percent "open" and located at least 40' from the centerline of Hillview Road right of way.

Continued to an unspecified date at the applicant's request.

- 3.2 LANDS OF TENG, 24460 Summerhill Avenue (206-02-ZP-SD.); A request for a Site Development Permit for a landscape screening plan and rededication of a storm drain easement. (Staff-Debbie Pedro)

Staff introduced this item by providing a brief background on the project which included the drainage design and pathway easement. Discussion ensued regarding when the house was approved by the County with a pathway recommendation, and the issue regarding trees planted in the road right-of-way which only shows "proposed" on the plan and not located within the road right-of-way. Also, the City Engineer commented on the request for a 10 foot pathway easement to accommodate for maturity of trees. The actual pathway will be 5 feet in width.

OPENED PUBLIC HEARING

Matt Kamkar, 1717 Little Orchard Street, San Jose, project engineer, questioned the need for a pathway as there is an existing walkway on the other side of the street although it is not in Los Altos Hills. Neither of the Teng's two neighbors have a pathway. There is a swale on the property so a bridge may be required with the construction of a pathway. He asked if it would be possible to use the pathway on the other side of the street until such time as the neighbors on either side were required to build a pathway.

Bob Stutz, Pathway Committee, discussed the need for a pathway which will require either a culvert or a bridge adequate to hold the water.

Chris Vargas, Pathway Committee, stated it may be a challenging pathway to build with a bridge although he felt there was an option to create a meandering path, close to the road, so they would not need a full bridge which would reduce costs. He felt Summerhill Avenue is a heavily used road and an important link to the pathway system.

Chris Hoeber, 24460 Summerhill Avenue, provided a written statement regarding drainage problems on the Teng property which have caused flooding on his property several times over the past 10 years. He was satisfied that the realigned easement is adequate for controlling the runoff through their property that has been a problem in the past. In addition to the runoff through the property, there is considerable runoff down Amigos Court that must find its way to the storm drain via the Santa Clara County easement along the south side of Summerhill Avenue. This runoff has, in the past, contributed to the flooding of the intersection and of his property. The County has dug a ditch to carry that runoff. The ditch has the ancillary benefit of allowing for some backup of the storm sewer under the road in the event that the storm sewer becomes blocked by debris, as it has in the past. He had spoken to Mr. Ron Jackson of the Roads and Maintenance Department who acknowledges that the County will be responsible for maintaining that ditch. However, that maintenance will be complicated by the re-contouring of the land adjacent to the ditch that was done as part of the development. There is a two foot plus mound of dirt (filled with construction rubble) that has been built alongside the ditch as part of the landscaping. It is inevitable that this mound of loosely compacted dirt and rubble will eventually fill the ditch, requiring constant maintenance. Item #16 states that "the area between the swale and the north property line along Summerhill Avenue should be restored to its original grades." He was told by staff that this is a recommendation to the County, but staff has no authority to enforce it. When he had spoken to Mr. Jackson at the County, he was told that since he had brought the potential problem to his attention, he would be sure to comply with the Town's request. However, since the ultimate design of the County easement depends on the resolution of the questions that the Commission has relative to the construction of a path, he wanted to express his concern that he does not think that the drainage problems have been completely resolved until the drainage path along Summerhill Avenue is completed, and requested that the three parties (Ms. Teng, the Town and the County) comply with the request contained in #16, (replace "should" with "shall") so as to mitigate maintenance problems in the future.

Matt Kamkar stated that one of the conditions of development was that they move a driveway off of Summerhill Avenue that use to serve the property and give access from Amigos Court which has been done. A part of what Mr. Hoeber was watching was to comply with the County condition regarding access. As mentioned, they cannot do work within the County right-of-way without their knowledge. The re-grading area will be a part of their landscaping so there will not be erosion or runoff into the ditch. He further discussed the requirements in condition #16.

The City Engineer stated that the County is still obligated to work with the Town to finalize this development which they did during the final walk through to allow the applicant to obtain a gas meter connection. She did not believe it would be difficult for the resident to work with the County and the Town to correct the unsightly situation in the road right-of-way.

Discussion ensued regarding changing "should" to "shall obtain an encroachment permit from the County of Santa Clara to restore the area between the swale and the north property line along Summerhill Avenue to its original grade." Mr. Kamkar felt this would be acceptable to the applicant.

CLOSED PUBLIC HEARING

Commissioner Kerns supports the pathway along the road. Hopefully the applicant can work with the County regarding the encroachment permit. He felt a bridge or culvert details can be worked out. Also he felt they needed to work with the County regarding the swale and re-grading. He was in support of moving the easement. Commissioner Cottrell had no issues with the project subject to the conditions previously discussed (condition #16 change). Chairman Clow concurred.

MOTION SECONDED AND PASSED: Motion by Commissioner Kerns and seconded by Commissioner Cottrell to approved the Site Development Permit for a landscape screening plan and rededication of a storm drain easement, Lands of Teng, 24460 Summerhill Avenue, with the following additions/changes to the conditions of approval: #16, "The property owners **shall** obtain an encroachment permit from the County of Santa Clara to restore the area between the swale and the north property line along Summerhill Avenue to its original grade. The grading operation shall be completed prior to final inspection."

AYES: Chairman Clow, Commissioners Mordo, Cottrell & Kerns
NOES: None
ABSENT: Commissioner Vitu

This approval is subject to a 23 day appeal period.

- 3.3 LANDS OF LO, 14303 Saddle Mountain Drive (204-03-ZP-SD-VAR); A request for a Site Development Permit to legalize an existing non-conforming pool patio and hardscape improvements and variances to exceed the property's maximum development area and to encroach into the 30-foot side yard setback. (staff-Angelica Herrera Olivera)

Staff introduced this item by reviewing the staff report noting two issues: 2,670 square feet of non-conforming development area; and portions of the existing development area encroaching up to 13 feet into the side yard setback, due mainly to the previous owners. Staff does believe that the applicant did not know of the non-conforming nature of the property prior to purchasing the property 15 years ago. The previous owners did know of the violations as notices had been sent to them. The Town records a "Notice of Violation" on the property with the County so any title search will uncover the violations. In this case, this was not done. The current property owner was unaware of the violations until after purchasing the property.

OPENED PUBLIC HEARING

Mr. Lawrence Lo, 14303 Saddle Mountain Drive, applicant, felt he was the victim here. He discussed looking for a house in 1992, purchasing in 1994. At that time he took pictures of the site, for future design assistance, he has photographed the site currently for comparisons. He had provided a photo chart for ease of comparison. He removed the gazebo in 2003, and the two patios in the back without any request from the Town. The old driveway has been replaced with interlocking bricks which helps the flow of water. He indicated that at the closing of the sale, there was no mention by the seller of any MDA violations on the disclosure report. He was only shown an approved pool permit with no conditions attached. He provided the disclosure statement for review.

He further reviewed the Findings;

#1, he purchased the house with a pool and decking and not a particularly large back yard. He did not expect to be asked to cut the pool and decking in half after living there for over nine years. Regarding the setback problem, the permit for the house and pool should not have been issued because of the encroachment.

#2, by allowing the variances does not give him a free pass to do whatever he wants in addition to whatever he has. He is only asking to keep what he bought nine years ago. Actually, they have reduced the development area by 500 square feet by removing the gazebo, two concrete patios and the concrete base for the solar panels.

#3, clearly granting this variance will not materially detriment the public welfare or injure any property within the immediate vicinity of this property. All neighbors approve the granting of the variance. There is no impact to a third person or property as a result of the granting of this variance.

#4, The use of the property in question will continue to comply with all zoning ordinances. It is a single residential structure and will continue to be so.

He further discussed the requirement of a disclosure statement so this type of situation would never happen again. The pool and decking existed prior to purchasing the house. They have reduced the development area by approximately 500 square feet prior to any code violation notices. They were led to believe that everything they were purchasing complied with Town codes. Both Mr. and Mrs. Lo are retired. This house and its equity are all they have. To comply with the Town's requirements would be a blow to their financial condition and would de-value the house. They should not be penalized for someone else's wrong doing.

Dot Schreiner, 14301 Saddle Mountain Drive, adjacent neighbor for 10 years, stated all of the development area has been in place since the Lo's purchased the home. On Saddle Mountain Drive, the second story did not count in the calculations and the height of the homes were a maximum of 30 feet in height which will continue to cause difficulty in this area. She felt the applicants were victims. They only thought they could replace what was already existing. She referred to the Lands of Lloyd and the granting of a variance which would be similar to this application. She asked what impact would the Planning Commission's decision be on future applicants. She questioned approving a pool without decking. The applicants simply restored the site. She hoped that the Commission would allow them to retain what they have restored or at least a good part of it.

CLOSED PUBLIC HEARING

Commission Cottrell did not believe in punishing someone for something they did not do. The applicants have already removed some of the development area. Removing the encroachment would cause more damage. He would like to find a way to accept this and note that the property is maxed out. Commissioner Kerns felt this was a difficult project. He agreed the applicants are victims. He was concerned with the precedent this approval would set. He had no issue with the area in the setback. Commissioner Mordo felt there should be a way so people know what they are buying. He suggested an amnesty program for three months so people can come forward with their non conforming issues. Chairman Clow felt real estate agents should be aware of disclosure statements.

MOTION SECONDED AND PASSED: Motion by Commissioner Cottrell and seconded by Commissioner Mordo to approve the Site Development Permit to legalize an existing non-conforming pool patio and hardscape improvements and variances to exceed the property's maximum development area and to encroach into the 30-foot side yard setback, Lands of Lo, 14303 Saddle Mountain Drive, with the following additions/changes to the conditions of approval, and the Variance Findings for approval: "A disclosure statement shall be recorded stating that the floor area of 5,612 square feet and development area of 12,253 square feet established for the property under Site Development Permit and Variance #204-03 are the maximum levels of development allowed."; and "The pool equipment and pool equipment pad shall be relocated outside of the 30-foot side yard setback *prior to final inspection and prior to release of the Site Development Code Compliance deposit.*"

AYES: Chairman Clow, Commissioners Kerns, Cottrell & Mordo
NOES: None
ABSENT: Commissioner Vitu

This approval is subject to a 23 day appeal period.

3.4 ORDINANCE AMENDMENT TO THE TOWN'S ZONING CODE WITH
REGARD TO FENCES (SECTION 10-1.504 (d) HEIGHT; Walls and
fences). (staff-Angelica Herrera Olivera)

Staff introduced this item by reviewing the staff report and providing the background for the proposed changes. Staff is recommending that the fences, walls, gates, and columns ordinance be incorporated as a section of Article 5 "Area, Coverage, Height, and Setback Limitations" of the Zoning Ordinance. Staff considered the Town of Woodside's Fences, Walls, Gates, Pylons, and Berms Ordinance, as well as past comments received from residents in developing the proposed fence ordinance. It was noted that the proposed fence ordinance would provide clarification of height and location requirements for open and solid fences and walls, and also establishes regulations for similar issues such as fence color and the measurement of fence height.

OPENED PUBLIC HEARING
CLOSED PUBLIC HEARING

Discussion ensued regarding the following: order is not sequential; simplify the language; deer fencing (define and have pictorial representation); "reference line" not needed (use centerline or property line); define a highly visible lot or remove it; add reference to screening of fences; change "natural" grade to existing grade; Table 2, change to forward to the Planning Commission rather than the City Council; preference to Woodside's fence ordinance layout (add more pictures and diagrams); add exhibits for deer fencing and gates; deer fencing a back yard use; high fences on high traffic corners (consider different standards); and questioning notification of adjacent neighbors.

PASSED BY CONSENSUS: To return at a future date (December or January) with clarifications, changes and modifications as noted by the Planning Commission.

AYES: Chairman Clow, Commissioners Kerns, Cottrell, Mordo
NOES: None
ABSENT: Commissioner Vitu

4. OLD BUSINESS

4.1 Report from subcommittees-none

5. NEW BUSINESS-none

6. REPORT FROM THE CITY COUNCIL MEETING

6.1 Planning Commission Representative for October 16th – None
6.2 Planning Commission Representative for November 6th - Planning Director Carl Cahill, reported on the following: Gigli Court erosion control project; discussion of proposal to grant pathway easement for Wildflower-Newbridge connection; Lands of Cingular Wireless/Lands of Town of Los Altos Hills; and Lands of Kerns, conservation easement agreement (continued).

6.3 Planning Commission Representative for November 20th - Commissioner Cottrell

6.4 Planning Commission Representative for December 4th – Commissioner Kerns

7. APPROVAL OF MINUTES

7.1 Approval of October 9, 2003 minutes

PASSED BY CONSENSUS: To approve the October 9, 2003 minutes.

8. REPORT FROM FAST TRACK MEETING- OCTOBER 21, 2003

8.1 LANDS OF BLECH, 25551 Burke Lane (137-03-ZP-SD); A request for a Site Development Permit for a 4,462 square foot new residence (maximum height 25 feet). Approved with conditions.

9. REPORT FROM SITE DEVELOPMENT MEETING –OCTOBER 14 & 21, NOVEMBER 4, 2003

9.1 LANDS OF NOGHREY, 27935 Roble Blanco Court (169-03-ZP-SD); A request for a Site Development Permit for a landscape screening plan. Approved with conditions.

9.2 LANDS OF KACHRU & DHAR, 13620 Roble Alto Court (98-03-ZP-SD); A request for a Site Development Permit for a landscape screening plan and hardscape improvements. Approved with conditions.

9.3 LANDS OF CAREY, 25621 Deerfield Drive (174-03-ZP-SD); A request for a Site Development Permit for a landscape screening plan. Approved with conditions.

9.4 LANDS OF SCHNEIDER, 24708 Olive Tree Court (162-03-ZP-SD); A request for a Site Development Permit for a landscape screening plan and hardscape improvements. Approved with conditions.

10. ADJOURNMENT

The meeting was adjourned by consensus at 9:05 p.m.

Respectfully submitted,

Lani Smith
Planning Secretary